

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**MAR 18 1996**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate	)	
Future Development of SMR Systems	)	
in the 800 MHz Frequency Band	)	
	)	DOCKET FILE COPY ORIGINAL
Implementation of Sections 3(n)	)	
and 322 of the Communications Act	)	GN Docket No. 93-252 ✓
Regulatory Treatment of	)	
Mobile Services	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act	)	PP Docket No. 93-253
Competitive Bidding 800 MHz SMR	)	

To: The Commission

**PETITION FOR RECONSIDERATION**

Resource Benefits, Inc. ("RBI"), pursuant to  
Section 1.429(d) of the Rules and Regulations of the Federal  
Communications Commission ("Commission"), by its attorneys,  
hereby respectfully submits this Petition for  
Reconsideration in the above-styled proceeding.<sup>1/</sup>

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<sup>1/</sup> FCC Report No. DC-95-150 (December 15, 1995), First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 61 Fed. Reg. 6138 (February 16, 1996).

## **I. BACKGROUND**

1. RBI is a small business 800 MHz SMR operator located in the greater Chicago area. RBI is a licensee in the upper 200 channel block of spectrum targeted for auction in the Commission's recent First Report and Order ("Order") in PR Docket No. 93-144. In 1993, RBI filed several applications for 800 MHz SMR licenses in order to construct a comprehensive 800 MHz SMR system for use by trucking and other industries. Many of these applications remain on a waiting list at the Commission. Thus, after filing applications in good faith reliance on the existing rules and waiting several years for the Commission to process and act upon those applications, RBI now faces the business expense and customer dissatisfaction caused by mandatory relocation of its existing facilities. Moreover, in order to develop its system as originally intended, RBI must compete with much larger corporations at auction.

2. RBI is troubled that the Commission has seemingly turned its back on small businesses offering local or regional service in favor of large corporations which seek to offer wide-area service. Adding insult to injury, the FCC proposed to relocate incumbent SMRs to the lower 80-channel SMR block and the General Category channels, even

though these frequencies are extremely congested and incapable of handling the large number of dislocated licensees. RBI reminds the Commission that there are currently over 10,000 private licensees located in the General Category channels alone. In light of the fact that the targeted relocation spectrum is clogged with existing users and that auctions for other wireless licenses have virtually excluded small businesses from effective competition, RBI urges the Commission to revise its Order to protect small business SMR incumbents.

## **II. PETITION FOR RECONSIDERATION**

### **A. First Report and Order, Service Rules for the Upper 10 MHz Block**

#### **1. Neither relocation nor stagnation are acceptable alternatives**

3. The Commission's Order is unfair to small businesses. Economic Area ("EA") licensees will have the right to construct at any available site within the designated EA and to relocate SMR incumbents after a one-year voluntary and two-year mandatory negotiation period. Incumbent SMR licensees who are not relocated will be given the operational flexibility, on a "self-coordinated" basis,

to relocate transmitter sites within their current 22 dBu contours.

4. Thus, small business incumbents such as RBI are faced with a no-win situation. They can either relocate, which causes disruption in service to consumers and undermines consumer confidence in that incumbent, or they can remain behind, trapped within a 22 dBu service contour while their competitor, the EA licensee, is allowed to offer wider coverage to the same customer base. The Commission should abandon its plan to relocate small business incumbent 800 Mhz SMR operators, and should keep the playing field level by permitting them to compete in the same service contours as EA licensees, either through pro-competitive auction policies or by charging existing incumbents a user fee for that portion of spectrum outside their current service contour.

**2. Relocation cannot be implemented in a vacuum**

5. A two-phase mandatory relocation plan was adopted in the Order. However, the FCC failed to absolutely guarantee that relocation must occur in the 800 MHz portion of the spectrum. RBI believes that this issue is critical

in order to ensure that, should the Commission determine to relocate incumbents, then small business incumbents will receive replacement facilities which are truly comparable to their existing systems and with minimal impact upon consumer satisfaction.

6. The Commission's proposed Section 90.699 provides that:

[A]n EA licensee may relocate incumbent licensees in its EA by providing "comparable facilities" on other frequencies in the 800 MHz band. Such relocation is subject to the following provisions:

(a) EA licensees may negotiate with incumbent licensees . . . for the purpose of agreeing to terms under which the incumbents would relocate their operations to other channels in the 800 MHz band, or alternatively, would accept a sharing arrangement with the EA licensee that may result in an otherwise impermissible level of interference to the incumbent licensee's operations . . . .

47 C.F.R. § 90.699. RBI believes that Section 90.699 must be clarified so that incumbent licensees are conclusively guaranteed relocation within the 800 MHz spectrum because only 800 Mhz spectrum will suffice for replacement of existing systems. Before this Order which relocates

incumbents is implemented, it should be clear where incumbents will relocate.

**B. Eighth Report and Order ("8th R&O"): Competitive Bidding Rules for the Upper 10 MHz Block**

7. The 8th R&O provided for the award of 525 EA licenses in the upper 10 MHz block by a single simultaneous multiple-round auction. Both incumbents and new entrants are eligible to bid for all EA licenses. The 8th R&O adopted a tiered approach to installment payments for small businesses that win licenses in the upper 10 MHz block; this approach is similar to the tiered approach utilized in the 900 MHz SMR auction.

8. RBI submits that, should the Commission determine that auctions truly are the correct approach, then the Commission should ensure that small business incumbents gain a real opportunity to compete fairly with larger corporations for upper 200 channel block licenses. RBI believes that the FCC's tiered approach is insufficient to ensure meaningful participation by small business incumbents because similar approaches are proving unsuccessful in other auctions. For example, bidders in the current PCS auction of so-called entrepreneur's block licenses have bid well

over \$8 billion dollars. The size of these bids and enormity of the real parties in interest confirm that, despite the label given to the auction, this is not in fact an auction for small businesses, but an auction for big businesses. Likewise, in the 900 MHz SMR auction, a great number of small businesses have been forced to withdraw from the auction, despite receiving 15% bidding credits and the ability to make payments on an installment basis.

9. The Commission should permit payment by small business 800 MHz SMR incumbents of a user fee for spectrum use in areas beyond their existing contours, rather than mandatory relocation and competition at auction. In the alternative, the Commission should provide small business 800 MHz SMR participants with a 50% auction bidding credit to allow them to compete effectively with larger businesses. Otherwise, small businesses will be forced to either accept paltry relocation offers or face extinction when the EA licensee commences service.

### **III. CONCLUSION**

10. The Commission's decision to allocate the upper 200 channel block for wide-area licensing and to furnish those licenses to the highest bidder is anti-small business.

RBI urges the Commission to reconsider this policy decision in light of the inability of small businesses to compete effectively in recent auctions in other services and the increasing consolidation of the communications industry in the wake of the Telecommunications Act of 1996.

**WHEREFORE, THE PREMISES CONSIDERED,** Resource Benefits, Inc. respectfully requests the Federal Communications Commission to grant the Petition for Reconsideration.

Respectfully submitted,

**RESOURCE BENEFITS, INC.**

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